The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

VOL. LXXIV. **Saturday, September 27, 1930.** No. 39

Current Topics.

Auditors' Reports and Subsidiary Companies.

AN EVENING newspaper, after stating that "profits and losses of subsidiary companies are not to be left unnoticed by the holding company's accounts," observes that "many instances of a lack of frankness on this matter are seen. A bald statement that losses of a subsidiary have been carried forward in its own accounts, and have not been incorporated in the holding company's accounts, or that profits of a subsidiary have been brought into the holding company's accounts, is the most frequent form the declaration takes." The provisions of s. 126 of the Companies Act, 1929 (the section being of course new law), do not appear to be violated by the practices suggested. If, however, there is compliance with the letter of the law in respect of s. 126, the question whether "a true and correct view of the state of the company's affairs" within s. 134 (1) (*b*) can invariably be given in such circumstances appears open to considerable doubt. If, for example, the holding company has itself made a good profit, but the subsidiary company has traded badly, so that a call on its shares in the immediate future is inevitable, the apparent profit of the former company, duly shown on its balance sheet, may be in reality, after the call has been met, a disastrous loss. If that were so, the statement of the profit would be simply misleading. No doubt the auditors' statement that such losses have not been computed in the holding company's balance sheet gives shareholders notice that the whole truth is not revealed, but, unless their attention is specially directed to the matter, the "bald statement" is not likely to put them on their guard, and make them require from the directors and auditors "further and better particulars" of the loss. Similar observations would apply if a company held shares in any other which was not a "subsidiary company" within s. 127, unless such shares were valued at their true value in the balance sheet, which might of course be a minus quantity if a call were likely. Incidentally, a balance sheet can always be falsified by valuing debts from an impending bankrupt or a man of straw at their face value. In fact, in respect of the valuation of assets in a balance sheet, shareholders have little or no protection against optimism or even downright fraud.

Preventive Detention.

IT WOULD seem from the recently issued report of the Commissioners of Prisons and Directors of Convict Prisons for the year 1928 that little, if any, useful purpose is served by the retention on the Statute Book of Part II of the Prevention of Crime Act, 1908, dealing with the award to "habitual criminals" of sentences of preventive detention. The statistics revealed in the report demonstrate the utter failure of the amiable system of attempting to prevent crime by awarding longer sentences. Between August, 1909, when the Act came into operation, and 31st December, 1928, 901 persons were awarded sentences of preventive detention, an average of about forty-eight in every year. On the other hand, of 434 men discharged from His Majesty's Prisons in 1928, 308 were recidivists, 254 of whom had had three or more previous convictions. The trend of modern views on the value of longer sentences of imprisonment is shown by the fact that the number of sentences of penal servitude decreased from 1,182 in 1908 to 483 in 1928. It will be remembered that s. 10 of the Act provides that where a person being convicted on indictment of a crime is sentenced to a term of penal servitude and admits that he is, or is found guilty by a jury of being, a habitual criminal, the court may, "if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years," pass a further sentence of not less than five or more than ten years' preventive detention to commence on the determination of the sentence of penal servitude. In order to convict a prisoner of being a "habitual criminal" the jury must find that since attaining the age of sixteen years he has at least three times previously to the conviction of the crime charged in the said indictment been convicted of a crime, and that he is leading persistently a dishonest or criminal life, or that he has been previously sentenced to a term of preventive detention as a habitual criminal. The very fact that the prisoner's previous convictions are revealed to the jury make his chances of escaping sentence extremely remote, and for that reason the warning which the judge must give to the jury that they ought not to be predisposed against him (*R.* v. *Young*, 23 Cox 624; 30 T.L.R. 69) is, it is submitted, an insufficient safeguard. It would be far better if Part II of the Act were erased from the Statute Book as being inconsistent with the best notions of British justice and unproductive of any measurable results.

Intermittent Terms.

LEASES OF business property sometimes contain provisions prohibiting tenants from occupying the premises at night; in some offices in London 9 a.m. and 6 p.m. are specified as the hours at which tenants may arrive and must leave respectively. It may be suggested that such an arrangement reduces the agreement to a licence, a lease being the grant of the right of exclusive occupation during a term. But in *Smallwood* v. *Sheppards* [1895] 2 Q.B. 627, an amusement caterer, who had taken some ground for three successive bank holidays, was held to be a tenant and liable for "rent"; and while a tenant of the offices mentioned is excluded from the premises during five-eighths of the term granted, presumably no one else is allowed to enter, and he might be said to occupy by the chattels which remain on the premises. So perhaps the true construction of the restriction, which is presumably designed to reduce rateable value and running expenses, is that it is in the nature of a reservation, just as the special features of *Smallwood* v. *Sheppards*, might have justified an analogy with an exception.

Tax Inspectors' Demands.

SOLICITORS, ACCOUNTANTS and secretaries frequently assist the Revenue authorities by furnishing information which the latter have no power to demand. Indeed, the Income Tax Acts provide the officials with little real power, and if taxpayers and practitioners refused to give information which was not provided for by statute, the whole machinery would break down. The Revenue is, therefore, so dependent on the co-operation and goodwill of the professions that it is surprising to find that in some cases inspectors are sending peremptory demands for computations of liability and information regarding clients' income to which they are not, in law, entitled. A polite request for these frequently meets with success, and always with a courteous reply, but the British professional man will tolerate *demands* only when they are backed by statutory authority.

Third-Party Insurance and Insolvency.

THE PASSING of the Third Parties (Rights against Insurers) Act, 1930, on 10th July, brings to an end an anomalous state of the law which sometimes resulted in considerable hardships being inflicted on innocent third parties where persons insured against third-party risks became insolvent. The unfairness of the old law was clearly illustrated in *In re Harrington Motor Company Ltd., Ex. parte Chaplin* [1928] 1 Ch. 105, when a pedestrian, who had obtained a judgment for damages and costs against a taxi-cab company in an action for personal injuries, found that on the supervening insolvency of the company he was merely entitled to prove in the bankruptcy, although an insurance company had paid over to the liquidator of the taxi-cab company the amount of damages and costs for which judgment had been obtained. Mr. Justice EVE held that the money so received was available for distribution among the general body of creditors, and was not earmarked either at law or in equity for the pedestrian, as "the liquidator, as recipient of the fund, stands in no fiduciary relationship to the plaintiff." The Court of Appeal affirmed the decision of Mr. Justice EVE, Lord HANWORTH pointing out that had the company remained solvent it would not have been required to pay over to the pedestrian the actual sum received from the insurance company but that it could pay out of its own resources and in such way as it pleased. He held therefore that the bankruptcy gave no fresh right to the creditor to follow the sum which was paid in respect of the loss by the insurance company to the taxi-cab company, and that no privity arose between the pedestrian and the insurance company. This decision was followed a few months later by an even harder case *Hood's Trustees* v. *Southern Union General Insurance Company of Australasia Limited* [1928] 1 Ch. 793. In that case a defendant in an action for personal injuries arising out of a motor accident was adjudicated bankrupt before the plaintiff had obtained judgment against him. In due course the plaintiff obtained his judgment. In an action, however, brought by the defendant's trustee in bankruptcy against the company which had insured the defendant against third party risks, it was held by Mr. Justice TOMLIN that the trustee was entitled to any sum which the defendant company were bound to pay under the policy, the learned judge pointing out that the injured plaintiff could not even prove against the trustee in bankruptcy, as his claim was for damages for a tort, and had not been liquidated by a judgment before the defendant's adjudication. This decision was upheld by the Court of Appeal.

The New Act.

THE ACT provides third parties with an analogous safeguard to that provided by s. 7 of the Workmen's Compensation Act, 1925, for workmen whose employers become insolvent. The short effect of that section is to enable a workman injured by an accident arising out of and in the course of his employment to have vested in himself his employer's rights against any insurers with whom the employer had insured with respect to liabilities under the Act, in the contingency of the employer becoming bankrupt, or making an arrangement with his creditors, or, in the case of a company, in the event of it being wound up or a receiver being appointed. Section 1 of the Third Parties (Rights against Insurers) Act, 1930, earmarks similarly for the benefit of third parties money due to persons insured against liabilities to third parties in the case of the insolvency of such insured persons, and contains the added precaution that in so far as any contract of insurance against third-party risks made after the commencement of the Act purports to avoid the contract or alter the rights of the parties in any way on the supervening bankruptcy or winding-up of the insured, the contract shall be of no effect. A further precaution is contained in s. 3, which provides that no waiver or assignment by or payment to the insured after the commencement of the bankruptcy or winding-up and after liability has been incurred to a third party, shall be effective to defeat or affect the rights transferred to such third party under the Act. Section 2 contains a useful supplementary provision making it incumbent on debtors, personal representatives of debtors, trustees, liquidators, receivers and managers to give such information as may be reasonably required by any person who claims that the debtor is under a liability to him, and imposing the same duty upon the insurer should the information from any of the above persons disclose reasonable grounds for supposing that rights against such insurer have been transferred under the Act. Cases where a company is wound up voluntarily merely for reconstruction or amalgamation purposes and cases to which s. 7 (1) and (2) of the Workmen's Compensation Act, 1925, apply, are of course, excepted from the operation of the Act. It only remains to add that the protection accorded by this Act to those who are injured by persons insured against third-party risks (the majority of such insured persons being motorists), has now been completed by the passing of the Road Traffic Act, 1930, Part II of which provides that, after the appointed day, which the Minister of Transport recently stated would be 1st January, 1931 for that part of the Act, all motorists, with a few necessary exceptions, must be insured or secured against third-party risks in such manner as complies with the provisions of that Act.

The Recovery of Tithe Rent-charge.

THE NEED for attention to technical details is shown by the recent case of *Jones* v. *Jarrett*, at Monmouth County Court, in which the applicant (the Rector of Ganarew) claimed 15s. due to Queen Anne's Bounty. The amount was claimed in respect of the period from the 1st April, 1928, to the 1st April, 1929, and, although the respondent did not become the owner until October, 1929, it was contended that he became liable for all arrears then due. The respondent's case was that (1) he was not the owner during the material period; (2) he had paid the first half-year's rent-charge for which he was liable on the 1st October, 1929; (3) no other demand had been received prior to the court proceedings; (4) during the material period his mortgagor was the occupier of the land, and the respondent was only the mortgagee, being neither in possession nor in receipt of rent. His Honour Judge THOMAS held that (1) the respondent was not the legal owner during the material period; (2) although the applicant was described as agent for Queen Anne's Bounty, he had not proved the agency, and therefore, had no *locus standi*. Judgment was accordingly given for the respondent, with costs. It is to be noted that, although tithe rent-charge is now vested in Queen Anne's Bounty, an incumbent may still be appointed agent for collection under the Tithe Act, 1925, s. 10 (1). Compare a Current Topic under the above title in our issue of the 23rd August, 1930 (74 SOL. J. 556).

Criminal Law and Practice.

OFFENCES AGAINST THE FACTORY ACTS.—A case which was decided by a Divisional Court at the end of last term is of considerable importance, because attention was called to the prevalence of erroneous decisions by courts of summary jurisdiction when called upon to deal with cases under the Factory Acts where an accident had taken place.

In this particular instance a workman fell and was electrocuted while working at a switchboard in a generating station, it being alleged that the requirements of the Factory Acts as to protective measures had not been fulfilled. Justices refused to convict the employers, apparently on the ground that they thought the work could have been done without danger.

The Divisional Court, on appeal, remitted the case to the justices, with directions to convict.

The Lord Chief Justice said that it was unfortunate that cases of this kind were constantly arising in which justices took the view that carelessness on the part of workmen was an answer to a prosecution under the Factory Act. No small part of the Act was to protect workmen against their own errors, or maybe their own faults. In the present case this unfortunate man lost his balance and fell, and it was no fault of his that his foot came into contact with a live conductor.

The fact is, that many people think that protection for grown men, such as is afforded by certain sections of the Factory Acts, is unnecessary, grandmotherly, and a hindrance commercially. Even if that be true, which we doubt, it is no answer to a definite statutory requirement, and justices will remember that the law must be obeyed even if employers find it irksome and unreasonable. In *Davies* v. *Thomas Owen & Co., Ltd.* [1919] 2 K.B. 39; 83 J.P. 193, it was held that although there was in that case no negligence at common law there was a breach of a statutory duty. Salter, J.: "If a machine cannot be securely fenced while remaining commercially practicable or mechanically useful, the statute, in effect, prohibits its use." It may be, therefore, that the Act will work hardly in preventing the use of some machinery in respect of which it is commercially impracticable to protect workmen against themselves, but the Acts are designed to protect careless as well as careful workmen.

THE CLERK'S COMMENT.—According to an evening newspaper, when two young men, arrested for stealing a car, pleaded that they were only going joy-riding, the clerk to the justices observed: "That excuse is played out."

Now, it is perfectly true that in some cases the plea of "joy-riding" is an impudent excuse; but it is no less true that where joy-riding is the real object of the accused and there is no intention permanently to deprive the owner of his car, then there is no offence of larceny of the car. This is a distinction definitely recognised by law, which no amount of proper arrogance with takers of cars can dispose of. What the position was in the particular case referred to, we do not pretend to know, as the two defendants stand remanded.

The excuse is certainly not played out. It is either valid or untenable, according to the facts of the case; neither time nor frequency can make it played out. It has to be considered wherever it is raised, and it seems a pity that a remark from the bench or their clerk should convey the impression that a possible defence has been simply brushed aside.

But, perhaps, the remark was not meant quite seriously, and was not even meant for others than the magistrates to hear.

Mr. William John Reynolds Pochin, M.A., of The Manor House, Wigston, Leicestershire, and New-square, Lincoln's Inn, London, W.C., one of the Masters of the Bench in Gray's Inn, died on 17th May, aged eighty, leaving £30,887, with net personalty £21,004. He left, *inter alia*, £200 to the Barristers' Benevolent Association and £50 each to his two clerks.

The Examination of Persons in Custody.

Police Powers and Procedure.

[We print below a copy of a Memorandum which the Home Secretary has sent to the Chief Constables of England and Wales as to the cautions to be administered to persons in custody and as to the obtaining of statements from them.]

Sir,—I am directed by the Secretary of State to say that he has had under his consideration that part of the Report of the Royal Commission on Police Powers and Procedure, namely, Chapter VI, paragraphs 180-194, inclusive, in which the Commissioners draw attention to the evidence they had received, which seemed to show that there were marked divergencies of opinion among Police Officers as to the proper construction to be placed upon what are known as the Judges' Rules, and suggest that this matter should be brought to the notice of His Majesty's Judges for any action which they may deem advisable.

In accordance with the suggestion of the Royal Commission, the Secretary of State has communicated with His Majesty's Judges, and the purpose of this circular, which is issued with their approval, is to remove any difficulties or divergencies of opinion as to the meaning of the Rules such as may have existed in the past. For convenience of reference the Judges' Rules are here set out as follows:—

(1) When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

(2) Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

(3) Persons in custody should not be questioned without the usual caution being first administered.

The Chief Constable.

(4) If the prisoner wishes to volunteer any statement, the usual caution should be administered.

It is desirable that the last two words of the usual caution should be omitted, and that the caution should end with the words "be given in evidence."

(5) The caution to be administered to a prisoner when he is *formally* charged should therefore be in the following words:—

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

(6) A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

(7) A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

(8) When two or more persons are charged with the same offence and statements are taken separately from the

persons charged, the police should not read these statements to the other person charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.

(9) Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

No particular difficulty appears to have arisen with regard to Rules (1) and (2), but the Royal Commissioners say that divergencies and conflicting views are prevalent as to how Rule (3) should be reconciled with the first sentence of Rule (7).

Upon this point His Majesty's Judges have advised as follows :—

Rule (3) was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody, and long before this Rule was formulated, and since, it has been the practice for the Judge not to allow any answer to a question so improperly put to be given in evidence; but in some cases it may be proper and necessary to put questions to a person in custody after the caution has been administered, for instance, a person arrested for a burglary may, before he is formally charged, say, "I have hidden or thrown the property away," and after caution he would properly be asked "Where have you hidden or thrown it?"; or a person, before he is formally charged as a Habitual Criminal, is properly asked to give an account of what he has done since he last came out of prison. Rule (3) is intended to apply to such cases and, so understood, is not in conflict with and does not qualify Rule (7) which prohibits any question upon a voluntary statement except such as is necessary to clear up ambiguity.

The Royal Commissioners next draw attention to the fact that the expression "persons in custody" is used in Rule (3), whereas the expression "prisoner" is used in the four subsequent Rules, and say that they have found some difference of opinion as to whether these two terms are intended to be synonymous. His Majesty's Judges advised upon this point as follows :—

"Prima facie the expression 'persons in custody' in Rule (3) applies to persons arrested before they are confined in a Police Station or Prison, but the Rule equally applies to prisoners in the custody of a gaoler. The term 'persons in custody' and 'prisoners' are therefore synonymous for the purpose of this Rule."

As regards any difficulties that may have arisen as to the proper form of caution : (*a*) at any time before the formal charge is made, and (*b*) immediately before the formal charge is made, the Judges say :—

"With regard to the form of the caution it is obvious that the words in Rule (5) are only applicable when the formal charge is made and can have no application when a violent or resisting prisoner is being taken to a Police Station. In any case, before the formal charge is made, the usual caution is, or should be, 'You are not obliged to say anything, but anything you say may be given in evidence.'"

In the Secretary of State's opinion this is a simple, emphatic and easily intelligible form of caution which may be properly used at any time during the investigation of a crime at which it is necessary or right to administer a caution. For example, where a person is being interrogated by a Police Officer under Rule (1), whether at a Police Station or elsewhere, and a point is reached when the Officer would not allow that person to depart until further inquiry has been made, and any suspicion that may have been aroused had been cleared up, it is in the opinion of the Secretary of State desirable that such a caution should be administered before further questions are asked. When any form of restraint is actually imposed, such a caution should certainly be administered before any questions or any further questions, as the case may be, are asked. When it comes to cautioning a prisoner immediately before he is formally charged, the form prescribed in Rule (5) should be used.

Attention is drawn by the Royal Commissioners to the fact that the word "crime" is used in Rules (1) and (2) and the word "offences" in Rule (8) and that some Police Forces have attached importance to this. The Judges point out that for the purpose of these Rules the words "crime" and "offences" are synonymous and include any offence for which a person may be apprehended or detained in custody.

The Secretary of State would remind the Police that the Judges' Rules were formulated for the purpose of explaining to Police Officers engaged in the investigation of crime the conditions under which the Courts would be likely to admit in evidence statements made by persons suspected of or charged with crime. Such Officers will usually be experienced Police Officers, and it is quite impossible to lay down a code of instructions which will cover the various circumstances of every case. They should bear in mind, however, the purpose for which these Rules were drawn up, namely, to ensure that any statement tendered in evidence should be a purely voluntary statement and therefore admissible in evidence. In carrying out their duties in connexion with the questioning of suspects and others they must, above all things, be scrupulously fair to those whom they are questioning, and in giving evidence as to the circumstances in which any statement was made or taken down in writing they must be absolutely frank in describing to the Court exactly what occurred, and it will then be for the Judge to decide whether or not the statement tendered should be admitted in evidence.

I am, Sir,
Your obedient Servant,
JOHN ANDERSON.

Home Office,
Whitehall.
24th June, 1930.

N.B.—The foregoing letter relates primarily to the procedure proper to be followed in investigating crime, for instance, in the matter of administering cautions. The references to the administration of cautions immediately before formal charging do not, of course, exclude the administering of the caution immediately after a charge has been accepted, taken down and read out to the accused, in which event both the form of question and the form of caution set out in Rule (5) should be used.

The Housing Act, 1930.

INDIVIDUAL UNFIT HOUSES.

YET another Housing Act has been placed on the statute book, and this recent legislative effort deals very thoroughly with clearance areas, improvement areas and other matters which will mainly concern the members of the profession who are directly connected with local government.

As, however, individual defective houses are dealt with by Part 2 of the Act, which replaces a number of sections dealing with the repair, closing and demolition of unfit houses in the early part of the Act of 1925, it is proposed to summarise briefly the new machinery which has been created to deal with this class of property.

The new Act creates a fundamental distinction between (1) Houses which can be rendered fit at a reasonable expense, and (2) Those which cannot be rendered so fit except at an expenditure which the local authority (or the county court on appeal) considers to be unreasonable.

If, therefore, a report is made by the responsible officer to the local authority concerned that the house is unfit, the authority will have to classify it as being either (1) Repairable at a reasonable cost, or (2) Not so repairable.

In the former case, "the person having control of the house" is to be required to repair the house, and the local authority may, on default, do the work and recover the cost from him.

In the case, however, of a house which cannot be repaired at a reasonable cost, it is to be demolished, unless the authority accept an undertaking from the interested party either that the house shall cease to be used for human habitation, or that he will undertake the necessary works to render it fit.

"The person having control of the house" is defined to mean the person who receives the rack rent of the house, whether on his own account or as agent or trustee for any other person, or who would so receive it if the house were let at a rack rent (i.e., a rent not less than two-thirds of the full net annual value); but a new protection has been given to trustees and agents by limiting their liability to the total amount of money they have had available to meet the demand of the local authority subsequent to the date of service of the prescribed notice.

A significant section dealing with appeals appears in the new Act and affords evidence of the efficacy of the protests which have recently been made against the inroads of bureaucratic control.

Under the Act of 1925 appeals relating to the condition and repair of houses were directed to be made to the Minister of Health, and it has been realised for a considerable time that a power of this nature usually meant in practice that some subordinate official at the Ministry virtually decided the matter, and in numerous cases decisions were made upon facts and contentions appearing from correspondence only and without any adequate inspection of the *locus in quo*.

Now, however, any person aggrieved by a notice requiring the execution of works to a dwelling-house or demanding repayment of expenses incurred by the authority in executing works specified in any notice or by a demolition order made under this part of the Act may appeal to the county court, and no further proceedings are to be taken by the local authority until the appeal is finally determined.

Incidentally, the rules are to provide for an inspection by the judge of the premises in any case in which he considers such a course desirable.

In determining whether a house is fit for habitation regard is to be had to the extent, if any, to which by reason of disrepair or sanitary defects it falls short of the standard required by the local bye-laws or of the general standard of housing accommodation for the working classes in the district; but local authorities are empowered to make advances to persons carrying out repairs on the same conditions as are now applicable to advances made for the alteration of houses under the Housing Act, 1925.

The remainder of the Act of 1930 (which contains sixty-five sections and six schedules) is too involved and hardly of sufficient practical interest to justify any detailed review, but the general practitioner may be assisted by the above summary of the new procedure affecting the repair or demolition of individual unfit houses.

LAW SOCIETY CRICKET CLUB.

The annual dinner of the above club will be held at the Trocadero Restaurant, Piccadilly-circus, on Saturday, the 25th October, 1930, at 8.30 p.m.

The president of the club (Mr. G. R. Y. Radcliffe) will preside.

Tickets will be 10s. 6d. each, and may be obtained from the hon. secretary, Louis D. Gordon, 11 & 12, St. James's-place, London, S.W.1, and from The Law Society's office, Bell-yard.

A cup is being presented at the dinner by one of the vice-presidents to the best all-round playing member of the club for the season.

Lawyers on Holiday.

(From our Special Correspondent.)

Washington, 27th August.

The morning was spent in various amusements, many of us going for a flight over the city in aeroplanes. Cars took us to the flying ground and tickets for the flight were provided by our hosts. At 1 o'clock we were entertained at lunch by Mr. & Mrs. Geo. E. Hamilton, a well-known Washington lawyer, at his delightful house, some miles out of the city. The drought, from which the whole country is suffering, had rather marred the beauty of the park-like grounds, covering over 100 acres, and containing many beautiful trees and shrubs. At 4 o'clock, as we were starting off for a garden party at the house of Mr. Henry L. Stimson, the Secretary of State and, of course, a lawyer, there was a very heavy thunderstorm, nearly half an inch of rain falling in half an hour. There was the usual delay in despatching the fleet of coaches, those punctual people who entered the first coaches having to wait forty minutes while the laggards of the party made their leisured toilets. The delegates were entertained at dinner at various private houses and clubs, and the writer was fortunate enough to be one of the sixty-five guests (all men) who were "banquetted," a word I use advisedly, at the house of Mr. Frank J. Hogan, one of the best known "Trial Lawyers," as they are called in the States. He was counsel for Mr. Doheny, the hero of the Teapot Dome Oil scandal, and the fee he is alleged to have received must make the English Bar's mouths water! Anyhow such a real good fellow deserves any fee he can get—with a Rolls-Royce thrown in—and we drank his health (of course in iced water as usual) with three times three. Then, off again to the British Embassy, where Sir Robert Lindsay gave us a most genial welcome in the fine new British Embassy, opened for the first time to-night—and I have an impression that I saw certain illustrious members of our party, surreptitiously wiping their mouths. I assume they had been drinking iced water.

Thursday, 28th August.

At 12.30 the gentlemen of the party drove off to lunch at the Washington Hotel as guests of the Barristers Club. It was served under an awning on the roof, and a very cool and pleasant place we found it, high up, and giving us a fine view over the city. At 2.30 coaches were waiting for us, and we hurried off to the Navy Yard, and boarded the U.S.S. "Porpoise," an oldish pleasure steamer, now on State service, for a trip down the Potomac River to Mount Vernon, the home of George Washington. It was a fairly long journey, and unfortunately the river was some eight feet lower than usual, owing to the prolonged drought, the result being that the steamer had to lie-off the creek leading to the Mount Vernon Landing Stage, while three launches took us ashore and there were long waits and considerable delay in getting us off, and on again. Mount Vernon is a pleasant old-fashioned country house standing high up on the bank of the river, and certain ladies forming the Mount Vernon Ladies' Association are responsible for its custody, and take it in turns to live there, maintain the house and supervise the daily pilgrimage of hundreds of visitors, to what is, in fact, a shrine. We were very late in getting back to Washington, and housekeepers must have gnashed their teeth as they saw their dinners spoiling. The writer dined at the Federal Law Dinner held in the grounds of the Carlton Hotel, perhaps one of the pleasantest *formal* dinners of the tour, and the quiet court-yard with the tables, beautifully decorated, lighted with candles, and with subdued lights over head, and for once, a restrained orchestra, will long dwell in our memories. Sir John Simon was to have spoken on India, but the delay and the necessity of keeping faith with the public compelled him to broadcast his speech from a private room at 9.30. A reception at the French Embassy concluded a somewhat tiring day.

Friday, 29th August.

This was a really hard-working day. At 10 o'clock we drove off in coaches to Annapolis, in Maryland, and a very few miles out of Washington found ourselves in a Southern State, redolent of MARY JOHNSTON and all the other writers on civil war history. We drove through Prince George County (named after Queen Anne's Consort), Anne Arundel County, and if the day had been longer, and we had nothing better to do, we might have visited the Counties of Kent, Cecil Caroline, Talbot, Dorchester, Somerset, Worcester, Queen Anne's, Charles, and Montgomery, and crossed the Rivers of Severn, Chester and Wye. No wonder we feel at home. We were welcomed, in a very English-looking court house, or town hall, by Governor ALBERT C. RITCHIE, who took the opportunity of making a very logical attack on prohibition, and its responsibility for much of the crime of the country. We then paid a short and rather hurried visit to the big Naval Academy, and, at 2 o'clock, embarked on the steamer "City of Richmond" and steamed away for Baltimore, getting lunch on board. As we approached this great city, with the exception of New York, the largest port on this side of the Atlantic, we were assailed by a hot wind which can only be described as a "Khamseen," and very reminiscent of the Red Sea. We were, as usual, very late, but were rushed up to our hotel, the Belvedere, where we found all our "wanted" luggage waiting for us, and was able to get a bath before getting into dinner jackets (or "Tuxedos," as they call them here), and drive off to dine with Mr. C. WILBUR MILLER at his fine country house in the Worthington Valley, about seventeen miles out of Baltimore. The drive had been hot and a little tedious, and we had had a tiring day, but "refreshers" were at once administered not only to the Bar but to Judges, and even to Solicitors and everyone. Even the women and children (for we have some with us) were at once hard at work sucking up mint juleps through straws and casting off that "tired feeling," becoming immediately, and for no apparent reason, rejuvenated. I have good reason for suggesting that it would be a good thing if mint juleps were administered to every member of the party immediately after breakfast. The dinner, an excellent one, was beautifully served in a huge striped marquee by coloured waiters. Mr. MILLER, who is President of the Davison Chemical Company, but started life as a lawyer, told us how, in a case which went to the House of Lords, he had been harried by one Mr. W. A. JOWITT who, however, was not able to deprive him of victory, and as the Attorney-General was sitting next to him, and eating his food, the story lost nothing in the telling. We toasted our host, told him, at the top of our voices, that he was a "Jolly good Fellow," and hurried off to the Alcazar at Baltimore where a reception had been staged for us at 9 o'clock, but we didn't arrive until after 11 o'clock and owe a debt of gratitude to the lawyers of Baltimore and their wives and daughters for waiting so patiently for our arrival.

Saturday, 30th August.

After being up until 1 o'clock, it was a little trying to have to catch the 8 a.m. train for Philadelphia, but our generous hosts had provided an excellent breakfast for us on board and we ran into Philadelphia at 10 o'clock to find a beautifully decorated platform and a reception committee determined to do everything in their power to make our short stay in their town a pleasant one. The usual fleet of coaches, escorted by policemen on motor cycles, were waiting for us, and off we all drove to the Supreme Court Chambers in Independence Hall (how these good Americans do love to rub it in), where an address of welcome was given by Justice OWEN J. ROBERTS, of the Supreme Court, and the usual speeches in reply were made. Some of the party inspected the Carson Collection of Blackstonian and other Prints and Documents, while those of us who are a little tired of worshipping at the shrine of BLACKSTONE—or any other jurist—went to the John Wanamaker Store and worshipped efficiency and organisation and, incidentally, sampled iced drinks and light refreshments. A drive of some 5 miles brought us to the Philadelphia Country Club, where a most ornate, and almost too extensive a luncheon was served on tables under the shade of spreading trees, the length of the luncheon making any reference to "shade" rather a misnomer. In other words, the sun pursued its usual course, and the most eminent lawyers (the adjective is not mine, but is shared by every newspaper in the U.S.A.) might have been seen with their heads shrouded in table-napkins, which, however effective, did not add distinction to the wearers. Six courses, most of them hot, and including crab cocktail, hot soup, fish and fillets of beef is a little too much, even for lawyers, and, at my own table and some of the adjoining ones, we passed so many tricks (I mean courses) that it might have been suggested we were playing bridge, and holding very bad hands. We had been asked to tea at the house of Mr. MACKAY, and some of us would have liked to spend a couple of hours in his delightful garden, but whatever else is omitted "suburbs" (that magical word) must be respected, and it was close on 6 o'clock when we turned into Mr. MACKAY'S park and found a kind host and hostess and a crowd of nice people waiting for us, to say nothing of iced drinks and lashings of tea. So we forgot the past, consumed the present and felt better. Our special train was to have left Philadelphia at 6 o'clock, but it was 8 o'clock before we got on board, and with a good dinner waiting for us, the two hours' journey to New York passed by quickly, and we were all very glad to find baths, beds and baggage awaiting us at the Hotel Plaza. I feel I may not have adequately impressed upon your readers the extraordinary amount of trouble, with complete disregard of cost, on the part of our hosts, which has marked every stage of our journey. It is literally true to say that apart from mere bed and breakfast, the whole of the very heavy expenses attaching to this long journey has, from the moment we landed at Quebec, been borne by our generous hosts, the various Bar Associations of Canada and the United States of America. We have not even had to concern ourselves with our baggage (a most troublesome and costly item of travel expense in these countries) which leaves our rooms in the morning and re-appears at the end of our journey with almost automatic precision. This is merely an example of the way in which we have been "franked" across these great countries, and I doubt if any body of visitors ever experienced such a warmth of reception or were treated with such overwhelming hospitality. This sort of thing has been said by more than one speaker; but I think it well that those at home should appreciate the position.

Sunday, 31st August.

A quiet day, giving us an opportunity to see something of the town, and an organ recital at the Temple Emanuel, and a service in the Episcopal Cathedral at 4 p.m. were the only events in the schedule.

Rambling Recollections of an Old Reporter.

II.

OF the various counsel to whom it has been my business to listen, a few stand out in my memory with great distinctness, in the case of some not so much on account of the brilliancy of their advocacy as by reason of certain personal characteristics. In jury cases in those early days ALFRED COCK and GEORGE CANDY were frequently to be seen, each having a certain forcefulness, although it could scarcely be said that their style showed the highest finish. ARTHUR CHANNELL, who later adorned the Bench, was great in local government

cases, which are never exhilarating, but these he knew thoroughly, and although his style was not very pleasing, he was always listened to with the greatest respect. Few of us then realised how great a lawyer he was, or the width of his range, but we knew it later when he sat in the Commercial Court and with masterly skill unravelled the intricacies of the law of bills of exchange, sale of goods and shipping. Among the juniors rising into fame and soon to take silk was JOSEPH WALTON, a consummate advocate, who also reached the Bench, although as a judge he scarcely reached the altitude he did as an advocate. An exceedingly genial man, he dearly loved a joke and could tell one with great success. One that he used to relate with gusto had reference to a consultation he had with a once famous leader. In the course of the consultation some reference was made to *Shelley's Case*, which for long was the bugbear of the law student. The leader asked, "What the devil is *Shelley's Case?*" Whereupon WALTON began to recall what he could of that famous decision, but he had not proceeded far when his leader broke in: "Oh," he said, "it begins to come back to me. It's this, is it not? You leave your property to one person and the other blighter takes it," an explanation which can hardly be described as orthodox, or one which would have satisfied an examiner, but it was certainly funny. WALTON'S work in his later days at the Bar lay chiefly in commercial cases, and when he went to the Bench the two noted protagonists in that special sphere were Mr. J. A. HAMILTON and Mr. T. E. SCRUTTON, whom we now know as Viscount SUMNER and Lord Justice SCRUTTON. Both were great lawyers, great advocates, and great masters of sarcasm. It was an intellectual pleasure to listen to them in the conduct of a commercial action; even a case with the most prosaic details could be lit by them so as to delight those who were following the proceedings. Those were the palmy days of the Commercial Court; work was plentiful and it was disposed of with commendable despatch. Occasionally HAMILTON had a dig at the reporters. In one case he was citing an authority in which a number of figures were set out, and referring to the report in two separate publications he pointed out that they differed in the figures given, which only showed, said he, how the same set of figures may strike different minds differently. On another occasion he expressed indignation at the temerity of a reporter who, in his statement of facts, set out several clauses of the material instrument, and then curtly added: "The remainder of the document was couched in the usual commercial jargon." This was, indeed, profanity in the eyes of a commercial court leader to whom charter-parties and bills of lading were the breath of life.

Of other counsel who were much in the public eye in those early days, one of the breeziest of leaders was OSWALD, Q.C., the author of that pleasing work, "Contempt of Court," in which he tells the delightful story of the rebuke administered by Mr. Justice BYLES to Mr. (afterwards Lord Chief Justice) COLERIDGE, in these terms: "Mr. COLERIDGE, I never listen with any pleasure to the arguments of counsel whose legs are encased in light grey trousers"! Never afraid of the judges was this pugnacious advocate. I was not present on the occasion, but I often heard of the incident when in the Court of Appeal he was asked by the senior judge if he had taken a certain point in the court below. "I did, my lord," was his reply, "but the learned judge stopped me." "How did he do that"? enquired his lordship. "By fraudulently pretending, my lord, that he was in my favour"! But I was present when he referred to some witness as a typical solicitor's clerk, "always ready to mark an affidavit," and on another occasion when he had a slight brush with Lord Chief Justice RUSSELL. OSWALD was for the defendant, his opponent being the present Master of the Rolls who, in opening the facts—it was a non-jury action—made out so strong a case for the plaintiff, that the Chief Justice interposed with the question to OSWALD, "What is the answer to this"? OSWALD got on his feet and stated very briefly what the defence was. This did not satisfy Lord RUSSELL, who impatiently tapped his desk with his pencil—a characteristic practice of his—and said sharply, "Such a defence ought not to have been put upon the record; consult your client." This was too much for OSWALD, who rose and said, "My lord, this case was brought into court to be fought and it is going to be fought; I have a very stout defence." The Chief Justice said nothing, but blew his nose defiantly, and the case proceeded. Notwithstanding OSWALD'S "stout defence," judgment was in due course entered for the plaintiff. Many years later, and almost exactly at the same spot in the front row where OSWALD was then appearing, I witnessed the famous altercation between two silks who, to the consternation of all present, actually came to blows. This was just before the judge came into court. What would have happened if the fight had taken place in the judge's presence I do not know. Would he have committed them for contempt? In fact, each was rebuked by his Inn of Court after an enquiry into the circumstances of the unseemly disturbance.

(*To be continued.*)

Company Law and Practice.

XLV.

RECEIVERS APPOINTED BY THE COURT.

DEBENTURES or debenture stock which do not constitute a charge on any of the property of the Company are perhaps unusual, but such do exist, and where there is no charge there can be no right to a receiver. But in the ordinary cases where there is a charge conferred by debentures, the holders will have the right, in certain events, to apply to the court for the appointment of a receiver.

The usual procedure in such a case is to commence a debenture-holders' action by writ, and then to move at once for the appointment of a receiver; if there is any business which it is desired should be carried on, it may also be advisable to ask for the appointment of a manager. The court will appoint a receiver in such a case where the security has become enforceable. Where either principal or interest are in arrear, there is a right to have a receiver (see *Strong* v. *Carlyle Press* [1893] 1 Ch. 268); and the holder of a floating security is entitled to issue a writ before the principal moneys become payable, so that when they have become payable, the court will then appoint a receiver (*Re Carshalton Park Estate* [1908] 2 Ch. 62). In that case a writ was issued by a first debenture-holder, who was also a trustee of the trust deed constituting and securing the first debentures, claiming the usual relief in a debenture-holders' action; he then moved for the appointment of a receiver and manager on the ground of jeopardy (a ground for the appointment of a receiver which will be dealt with later on in this article). At the time of this motion interest was not in arrear, and the principal was not due, and no order was made on the motion, as no case of jeopardy was made out.

About a month afterwards the principal did become payable, and a second motion in the action was immediately launched for the appointment of a receiver and manager. It was urged against this application that there was no cause of action subsisting at the date of the issue of the writ, and therefore the whole of the proceedings in the action were invalid, but WARRINGTON, J., stated definitely that he must hold, and that there was no reason for not holding, that where there is a floating security the holder of it has a right to issue a writ to protect his interests before the money becomes payable, and accordingly he appointed a receiver and manager as asked.

A somewhat curious point in connexion with the appointment of a receiver arose in *Re Crompton & Co.* [1914] 1 Ch. 954, where a series of debentures were issued on the condition (*inter alia*) that the principal moneys should become immediately payable if an order was made or effective resolution

passed for winding up the company, otherwise than for the purposes of re-organisation, reconstruction or amalgamation. In the absence of any provision to the contrary, a winding up of a company which has issued debentures which are not payable under their terms at the date of the winding up, nevertheless entitles the holders to realise their security, and, in the case of a floating charge, crystallises that charge. But what had to be decided in the *Crompton Case* was whether the condition above mentioned precluded the application of the doctrine. In effect, it was held that it did not, and that, on a winding up for the purposes of reconstruction, the debentures became payable, and therefore the plaintiffs had a right to have a receiver appointed. Apart from any question of authority, or even principle, and merely as a matter of common sense, this is very obviously right, for if the company issuing the debentures winds up and transfers its assets to a new company, where is the floating security of the debenture-holders ?

Lastly, the court has an inherent jurisdiction to appoint a receiver in cases where the security is in jeopardy, and this jurisdiction it will, in a proper case, exercise. But it must be shown that there is real danger, and though the security may be totally inadequate to cover the debentures, this is no ground for the appointment of a receiver where outside creditors are not putting pressure upon, or threatening, the company (*Re New York Taxicab Co.* [1913] 1 Ch. 1). Jeopardy of the nature to justify the appointment by the court of a receiver is well illustrated by *Re London Pressed Hinge Co.* [1905] 1 Ch. 576, where a creditor had signed judgment against the company, and BUCKLEY, J., appointed a receiver on the ground of jeopardy, though not without some comments as to the possible injustice produced by floating charges in some cases, owing to the fact that a company may mortgage its property, present and future, and that a debenture-holder may stand by and allow others to advance money to the company, and then come in and claim the assets.

Here one may turn to s. 13 of the Companies Act, 1907, which became s. 212 of the Consolidation Act of 1908, and now, as amended, appears as s. 266 of the Companies Act, 1929, which provides that a floating charge on the undertaking or property of a company created within six months of the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, with 5 per cent. interest thereon. This section does not deal directly with the particular criticism made by BUCKLEY, J., but it may well indirectly affect dealings of the nature referred to, and it does directly deal with a certain class of evils of the nature pointed out in *Re Orleans Motor Co.* [1911] 2 Ch. 41.

(*To be continued.*)

A Conveyancer's Diary.

Settled Legacies Bequeathed Free of Duties.

I left this subject last week with only a passing reference to *Re Wedgwood: Allen* v. *Public Trustee* [1921] 1 Ch. 601, a case which I said was worthy of closer examination than I could then devote to it. I referred generally to the decision and quoted an extract from the judgment of Lord Sterndale, M.R., which, in effect, amounted only to this—that in every case it is a question of construction whether future duties are or are not intended to be included in a provision exonerating settled legacies from the payment of duty. I pointed out that there was nothing new in that, and if the matter remained there it would not be profitable to pursue it further. Unfortunately (as I venture to think) this case, like many others, turning as the individual judges and lords justices have been careful to state, upon pure questions of construction, have been persistently treated as precedents to be followed. Instances of this will leap to the memory of every reader of this journal. I must not, however, digress too far. The subject of the necessity for or the desirability of the reporting of cases turning upon questions of construction has been much commented upon of late both in the legal and the lay press, and I do not wish to rush into that controversy at present. I only wish to point out that the decision of the Court of Appeal in *Re Wedgwood* turned upon the construction of the will which was before the court in that case, in which, it should be noticed, the very point arose that gave rise to the difficulty in *Re Stoddart* (to which I referred last week), namely, that the future estate duty in question was imposed after the death of the testator.

The facts in *Re Wedgwood* were that a testatrix by her will dated in 1913 bequeathed a number of pecuniary legacies, and, amongst others, a legacy of £5,000 to the N.A-V. Society, and directed "that all legacies and annuities given by this my will or any codicil hereto . . . shall be paid free of all death duties." The testatrix then devised and bequeathed all the residue of her real and personal estate to her trustees upon trust for sale, with a direction out of the proceeds "to pay and provide for any funeral and testamentary expenses and debts and the pecuniary legacies bequeathed by this my will or any codicil hereto and the duties on all the legacies and annuities bequeathed free of all duties." The beneficial trusts were to pay "free of all death duties" certain annuities, with a direction to appropriate funds for answering them by the income thereof, and then to pay to each of her nephews, B.H.W. and J.I.W., "free of all death duties," the sum of £6,000, and to her niece, M.E.W., "free of all death duties," the sum of £1,000, and to hold the residuary estate in trust for C.W. absolutely. The testatrix then declared that the sum of £6,000 was not to be paid to her nephew J.I.W., but was to be held upon certain trusts for him and other persons in succession. By a second codicil dated in 1913 the testatrix reduced the legacy of £5,000 to the N.A-V. Society to £2,500, and directed that her will should be read and have effect as if a legacy of £2,500 "free of all death duties" had been thereby bequeathed in lieu of the said legacy of £5,000. The testatrix then bequeathed "free of all death duties" to her trustees £2,500 upon trust to invest the same and pay the income to her sister, Lady F., for life, and after her death for the N.A-V. Society. The testatrix died on the 26th November, 1913.

On a summons taken out to determine out of what fund the legacy and estate duties which would become payable in respect of the settled legacies on the deaths of the respective tenants for life should be taken, it was held by the Court of Appeal (reversing Sargant, J.) that the legacy duty was payable out of the residuary estate and (affirming Sargant, J.) that the estate duty was payable out of the corpus of the settled legacies. In the course of his judgment, Sterndale, M.R., differentiated between legacy duty and estate duty. He pointed out that legacy duty was payable by the executors and was *primâ facie* payable at once, but that as the rate payable by the parties ultimately entitled might not be the same as that payable by the tenant for life payment might be postponed until the death of the tenant for life, although the liability arose on the death of the testatrix. The executors could therefore have no difficulty in providing for the payment by retaining enough to pay the duty at the maximum rate. He considered the risk of the rate of duty being increased as negligible. Then he went on: "Estate duty stands in an entirely different position. At the time of the making of this will, and also at the time of the testatrix's death, if that be material, which I do not think it is, there was no estate duty payable in respect of this legacy, but by the Finance Act, 1914, settlement estate duty which was previously charged

was abolished and an estate duty payable on the death of the tenant for life was imposed. This duty was payable on succession, not to the testatrix, but to the tenant for life." Lord Sterndale then proceeded to deal with *Re Palmer* and *Re Parker*, and came to the conclusion that in the will under consideration the expression "free from all death duties" did not mean free from estate duty arising on the death of a tenant for life of a settled legacy.

Warrington, L.J., agreed with Lord Sterndale, but Younger, L.J., dissented and delivered a most interesting and well reasoned judgment in which, in effect, he expressed the view that the expression "free from all death duties" meant what it said and operated as an exemption from all duties arising by virtue of the dispositions in the will, whether such duties were imposed before or after the death of the testatrix.

Re Wedgwood has been followed in several later cases. In every case care is taken to empasise the fact that it is always a question of construction, but the decision of the Court of Appeal in that case seems to pervade them all. The logic of the dissenting judgment of Younger, L.J., appears to be lost.

In *Re Fenwick* [1922] 2 Ch. 773, a testator who died in 1912 appointed Lloyds Bank Limited to be his executor and trustee, and gave certain shares in Lloyds Bank Limited to the bank "Upon trust to sell so many of such shares as shall be sufficient to pay all my debts and funeral and testamentary expenses . . . and all duties of every description (including settlement estate duty where payable) to which my estate both real and personal or any part thereof shall be liable and subject to such payments in trust for my son absolutely," and he devised and bequeathed his residuary real and personal estate to his trustees free of all duties upon trust to pay the income thereof to his wife during her life and after her death in trust for his two daughters for their lives, with trusts over.

It was held that the duties which were payable on the deaths of the testator's daughters were not payable out of the proceeds of sale of the shares, but must be paid out of the residue.

This is rather an interesting case in several respects. The following passage from the judgment of Sargant, J., raises several points: "Further there is this to be noted, and I attach considerable importance to it, that the shares in question are shares on which there is a very large liability. If the duties that were payable were to extend to all duties that might thereafter become payable, and were not duties ascertainable immediately or within a very short time, the result would be that under the provisions of the will all the shares in Lloyds Bank . . . would have to be held by the trustees with this liability upon their shoulders. I should think there are very great objections to Lloyds Bank themselves as trustees holding the shares of Lloyds Bank." It seems to me to be obvious that the learned judge was there not treating the question as one of construction, but as one of convenience.

In *Re Duke of Sutherland* [1922] 2 Ch. 782, there was a clause in the will which declared "that all legacies and annuities and all other gifts bequests and devises therein contained shall be free from death duties . . . and I direct that such death duties shall be paid out of my residuary estate." The testator bequeathed a considerable sum upon trust for his son for life and afterwards to his son's issue.

It was held that the duty payable on the son's death was not payable out of the residue.

A still later case is *Re Sarson* [1925] Ch. 31, in which Eve, J., adopted the same construction and held that future duties were not payable out of residue when the direction was that "all estate, settlement, succession, legacy and other duties in respect of any of my property (real or personal) including the duty, if any, on any gifts made by me in my life shall be paid out of my residuary estate."

The result seems to be that it is not safe to rely upon any general expressions if it is desired to relieve settled legacies of estate duty payable upon the death of a tenant for life for, however comprehensive, such expressions are likely to fail of their purpose. It is best to say in so many words that all estate or other duty imposed or payable on the death of the testator or of any annuitant or life tenant shall be borne by the residuary estate or other fund upon which the testator wishes to throw it.

Landlord and Tenant Notebook.

Illegality and Immorality.

The position of the landlord when premises are used for an illegal purpose may depend upon when the purpose in question became illegal. It may also depend on whether the purpose was the, or a, purpose for which the premises were let. This question may be decided either by reference to the terms of the grant or to other circumstances. In *Ritchie* v. *Smith* (1848), 6 C.B. 462, part of some licensed premises had been let to a man who held no justices' licence. Business was conducted under colour of the plaintiff's licence, and when the latter sued the tenant's surety for rent, the court refused to enforce the contract, the purpose of which was to enable illegal things to be done.

In these cases the mere fact that the premises can be occupied without anything illegal being done will not avail the plaintiff. This was emphasised in *Gas Light & Coke Co.* v. *Turner* (1840), 9 L.J. Ex. 336. The company sued its tenant for breach of a covenant to buy tar. It was clear that the lease contemplated the user of the premises for the purpose of tar-boiling, and that in greater quantities than 10 gallons at a time, the limit imposed by law for premises of that class. The argument advanced on the plaintiffs' behalf, that the tenant could, if he liked, boil less than 10 gallons at a time, did not succeed.

But if the purpose be not illegal at the time of the grant, no warranty that that state of affairs will continue can be imported into the lease. This was clearly laid down in *Newby* v. *Sharpe* (1878), 8 Ch.D. 39, C.A. The defendant having let part of his premises for the purpose of storing gunpowder, let another part to the plaintiff with the right of storing cartridges there. This was rendered illegal by the Explosives Act, 1875; the cartridges became liable to seizure; the defendant removed them, and his tenant sued him for eviction and breach of covenant for quiet enjoyment. Possibly if the action had been brought for trespass, nominal damages would have been awarded; as it was, the court held that no covenant had been broken, and that there had been no eviction.

The above case may be compared with *Gibbons* v. *Chambers*, (1884), 1 T.L.R. 530, an action for rent of a disused burial ground which was the subject matter of a building agreement. The agreement could not have been fulfilled without removing the dead, and such a procedure had, since the date of the agreement, been made illegal by statute. But it was on the wider ground of outrage on public decency that the court declined to enforce the agreement. One judge describing the case as "an unholy proceeding."

There is very little authority to throw light on the position of the lessor who has not been party to the illegal user. Generally speaking, the illegal user will constitute a breach of covenant; and in the case of a statutory tenant, a badly drafted provision in the "principal Act" may enable the landlord to recover possession. If the tenant has not yet entered, the landlord may apparently treat the agreement as void: see *Cowan* v. *Milbourn* (1867), 15 W.R. 750, in which the owner of rooms let for the purpose of lectures refused to give possession when he found out that the lectures would involve breaches of the blasphemy law. Presumably the abolition of the doctrine of *interesse termini* has not modified the position. Reference may also be made to *Litvinoff* v. *Kent* (1918), 34 T.L.R. 298, in which the plaintiff-tenant had

carried on revolutionary propaganda from the premises contrary to covenants, but not contrary to any conditions, in the lease. On being excluded from the premises, he applied for an injunction, which the court refused; but it should be borne in mind that the remedy in question is an equitable one, and the defendant was able to show that the plaintiff had not come into the court with clean hands.

The rights of parties when premises let are used for an immoral purpose are, generally speaking, analogous; without, of course, any complication due to the possibility of a purpose becoming immoral during the term. Immorality means sexual immorality, and the rule that a landlord cannot recover rent if the premises be let, to his knowledge, for an immoral purpose, applies to rooms occupied by a kept woman for the purpose of being visited there by the man who is keeping her: *Upfill* v. *Wright* [1911] 1 K.B. 506. But the morals of a tenant do not affect the landlord's rights if the premises he lets are not used for immoral purposes: see *Appleton* v. *Campbell*, (1826), 2 C. & P. 347. And if the landlord is ignorant of the tenant's intended immoral user, he can recover rent: *Crosse* v. *Murray* (1850), 15 L.T. (o.s.) 206; nor is the agreement voidable in the absence of fraud or misrepresentation, as was held in *Feret* v. *Hill* (1854), 2 W.R. 492. Apparently, however, the lessor ought to take steps to determine the relationship on becoming aware of immoral user; in *Jennings* v. *Throgmorton* (1825), Ry. & M. 251, the tenancy was a weekly one, and it was held that rent accrued due since the landlord became aware of the user could not be recovered. And when premises are used as a brothel and the tenant has been convicted of permitting them to be so used, the landlord has at his disposal the machinery provided by the Criminal Law Amendment Act, 1912, s. 5 (1), by which he can determine the lease apart from any proviso.

Our County Court Letter.

THE CALCULATION OF MINERS' WAGES.

In *Merricks* v. *Rossington Main Colliery Company*, recently heard at Doncaster County Court, the plaintiff claimed £3 as damages for wrongful dismissal. The plaintiff's case was that he had emptied five "muckers" (or tubs of dirt) but, owing to the double handling which had been necessary, he was entitled to credit for payment for ten. The tubs could sometimes be emptied easily, but, in cases of difficulty, the system was to allow double payment, which was divided among all the men in the stall. The defendants' case was that, after an inquiry by the deputy (as to whether the plaintiff was to be paid for ten or five) the under-manager had offered to settle the matter, if the plaintiff would sign for a fine of £2. On his refusal to do so, the defendants had contemplated proceeding against him for endeavouring to obtain money by false pretences, and had dispensed with his services. The defendants agreed that payment for double handling was recognised, the rates being 9d. and percentage for emptying a "mucker," and 4½d. and percentage for a "motty." Their contention was, however, that it was usual to make a bargain with the deputy, in the event of the need for double handling arising, and that this procedure had not been followed. His Honour Judge Hildyard, K.C., gave judgment for the defendants, with costs.

The bearing of the above subject upon workmen's compensation was considered in a recent case at Nottingham County Court, in which a miner had been employed by the Linby Colliery Company Limited as a stallman and as a contractor, alternately. The two methods of working were interchangeable, and a question arose as to whether the compensation should be based upon the earnings as a contractor (in which capacity the applicant was working at the time of the accident) or upon the combined earnings as contractor and stallman for the previous year. The applicant's case was that a contractor had more responsibility than a stallman, but the respondents pointed out that the two jobs were not classed in different grades, and that the only difference was in the method of payment. His Honour Judge Hildyard, K.C., remarked that a contractor was not only paid differently, but he did different work, as he undertook to get coal, was paid for what he got, and made his own arrangements for helpers (and their rates of pay) without reference to the colliery company. The two positions were nevertheless interchangeable, and a contractor was not degraded by becoming a stallman again, but the general distinction did amount to a difference in grade within the meaning of the Act. The result was that compensation must be calculated, not on the whole period, but in respect of that during which the applicant worked as a contractor only. Judgment was therefore given for the applicant, with costs.

Practice Notes.

LIABILITY FOR INJURIES TO STRAYING ANIMALS.

In *Kent* v. *Lichfield Rural District Council*, recently heard at Lichfield County Court, the plaintiff claimed £50 for injuries to two horses by reason of the negligence of the defendants. The plaintiff had given permission for a sewer to be laid through his farm, and his case was that, as the defendants' workmen had made a gap in one of his hedges to shorten their journey home, his horses had strayed from a field into the stackyard. One horse had become lame through an injury to the shoulder, and the other had died through eating wheat at the wrong time of the year, as fermentation had ensued. The defendants' case was that the fences on the plaintiff's farm were unsound, and that the bag of wheat had been left half open on a lorry. His Honour Judge Ruegg, K.C., observed that there was no evidence that the defendants' workmen made the gap, but it had been repaired by means of a hurdle, which was in position when the horses were put into the field at 5 p.m. on a Saturday. The workmen had left at noon on that day, and the inference was that the horses made the gap themselves, but there was a further allegation that they got out of the stackyard through a gate which had been left open. It was the plaintiff's duty, however, to keep them from straying from the field in which they were put, and, in the absence of evidence of negligence, judgment was given for the defendants with costs. Compare a "Practice Note" entitled "Farmers' Liability for Animals on the Highway," in our issue of the 14th December, 1929 (73 Sol. J., 830).

EXECUTORS' LIABILITY FOR NURSING EXPENSES.

II.

(*Continued from* 74 Sol. J., *p.* 457.)

Relationship as a bar to payment for services rendered was considered in the recent case of *Griffiths* v. *Griffiths* at Aberayron County Court, in which the defendant was sued as executor for £80 due from his mother, the testatrix, who was also the plaintiff's mother-in-law. The will provided for everything to be divided among the children, but the plaintiff's case was that she had been asked to attend to her mother-in-law, and between 1921 and 1927 there were numerous occasions upon which the plaintiff had worked in the garden, and had bought food, clothing, garden seeds, etc. The plaintiff had not asked for the payment from her mother-in-law, as the latter had always said she would remember the plaintiff, who would be paid after her death. The defendant's case was that the services had not been rendered for reward, as the plaintiff had once protested at an announcement that the deceased had given her £1. His Honour Judge Frank Davies remarked that daughters-in-law were expected to look after parents in illness, unless prevented by poverty or illness, and it was natural for money to be left to children, or to sons-in-law or

daughters-in-law. It had not been proved that the deceased had accepted the services on the basis of a contract, and the plaintiff's evidence was contradicted by a letter, in which she had apparently scorned payment by reason of having ample funds. Judgment was therefore given for the defendant with costs.

Legal Fictions.

VII.

The Jester and the Chatterbox.

SCENE: A King's Bench Divisional Court (Civil Paper). An Associate, various counsel, solicitors, clerks, and reporters are in the body of the court. The gallery is occupied by one old man with a red nose and a wheezy cough, which interrupts the proceedings at intervals. Enter an Usher.

USHER: Si——lence!

Enter Mr. Justice JESTER and Mr. Justice CHATTERBOX and take their seats. The Associate rises and remarks in a bored voice—

ASSOC.: *Jones* v. *Smith*.

Mr. SMITH (of counsel) rising: If your lordships please. In this case I——

CHATTERBOX, J.: Whom do you appear for, Mr. Smith?

SMITH: For the appellant, my lord, Mr. ——

CHATTERBOX, J.: Which is the appellant?

SMITH: Mr. Jones, my lord, the——

CHATTERBOX, J.: Was he the plaintiff or defendant below?

SMITH: Plaintiff, my lord. My learned——

CHATTERBOX, J.: Is anyone here for the respondent?

SMITH: My learned friend Mr. Jones, my lord, is for the respondent.

JESTER, J.: Mr. Smith is for Jones and Mr. Jones is for Smith. It appears to be a sort of forensic *chiasmus*.

(Peals of laughter from the only person in court who happens to remember his Greek grammar sufficiently to know the meaning of the word *chiasmus*. It is taken up a little late by the rest of the audience.)

CHATTERBOX, J.: Well, do get on, Mr. Smith. Speaking for myself, I can't make out what this case is all about. What was the action for?

SMITH: It was a claim for the price of goods sold and delivered. My client is a clergyman——

CHATTERBOX, J.: What were the goods?

SMITH: My client, the clergyman, sold the defendant a pup——

JESTER, J.: Are you speaking literally or colloquially, Mr. Smith?

SMITH } (in unison) { Literally, my lord.
JONES } { Colloquially, my lord.

SMITH: I say literally; my friend says colloquially. That was the whole question in the case.

JESTER, J. } (in unison) { That seems a question of
CHATTERBOX, J. } { fact.

SMITH: Oh, no, my lord. It raises two points of law of great importance.

FIRST LAW REPORTER (*sotto voce*): Damn!

SMITH: The defendant bought from the plaintiff a pedigree Pekingese puppy and won't pay for it——

CHATTERBOX, J.: Why not?

SMITH: She alleged that it was a mongrel and had every conceivable fault a puppy could have.

JESTER, J.: That *still* seems a question of fact, but——

CHATTERBOX, J. (interposing before Jester, J., can finish his intended joke): What are your points of law?

SMITH: The learned county court judge did not give effect to the presumption of law that a clergyman speaks the truth.

JESTER, J.: It seems to me presumptuous to suggest that such a presumption exists. (Titters.)

(*To be continued.*)

Correspondence.

Mental Treatment Act, 1930.

Sir,—With reference to the letter from the Chairman of the Board of Control which appeared in your issue of the 13th instant, it should be borne in mind that the avowed object of the above Act is to treat mental cases more like ordinary patients—the keynote, in future, being prevention instead of detention.

It should not, however, be assumed that this Act gives effect to the most important recommendations of the Royal Commission, who reported in favour of *an entirely new lunacy code*. As a society we shall continue to press for radical reform, the necessity for which has been admitted on all sides. The problem is too big for half-measures and the Minister of Health has stated that the Bill is inadequate.

When the Act of 1890 was under discussion the *immediate* suppression of licensed houses (which are run for private profit) was considered, and the Royal Commission were unanimous in their recommendation that these institutions should be subjected to an annual audit.

It is regrettable that the clause in the new Act, expressly inserted for this purpose by the House of Commons in Committee, was deleted in deference to the Lords' respect for the sanctity of private interest.

The Commissioners also proposed that the judicial authority should be strengthened, and as we remarked in our report for 1926: "These provisions, *if adopted and not evaded*, should go far to meet criticism of the present procedure. They are based on the elementary principle of justice, that before an individual is deprived of his liberty, he should know at least the allegations made against him and be allowed the opportunity of giving an explanation. Unfortunately these proposals have not been acted upon.

The most stringent additional safeguards for the liberty of the subject, at each step, were proposed by the Royal Commission, whereas the Mental Treatment Bill is intituled: "An Act to amend the Lunacy Acts, 1890 to 1922, and such of the provisions of the Mental Deficiency Acts, 1913 to 1927, as relate to the constitution and organisation of the Board of Control, the exercise of the powers of the Board and *the protection of persons putting those Acts into operation*."

There is not a word about the protection of the prospective patient.

FRANCIS J. WHITE,
Secretary.

National Society for Lunacy Law Reform,
60, Avenue-chambers,
Southampton-row,
London, W.C.1,
16th September.

Joint Wills.

Sir,—I read with interest the "Conveyancer's Diary" article in last week's SOLICITORS' JOURNAL; but is not your contributor under a misapprehension in stating that a joint will "properly so called, takes effect upon the death of the survivor of the two testators, and cannot until then be admitted to probate"? I was under the impression from a note which I made some time ago that in *Hobson* v. *Blackburn* (1822) 1 Addams 274 (a leading case on the subject of so-called "joint" wills), there was a "joint" will which was proved as to his effects only, upon the first of the joint testators dying, and that the court later rejected proof of the "joint" will as such on the ground that a joint instrument of that nature was unknown, as a will, to English law, although it might be valid in equity as a compact creating a trust. I have not had an opportunity of referring again to "Theobald" or "Jarman" on Wills; but I believe that it is also stated in one, or both of them, that so-called joint wills are regarded as constituting the

separate wills of the individuals concerned, each of such wills being proved as to his own estate at the respective dates upon which they die, no probate being granted of the "joint" will, as such, at any time.

Possibly, your contributor would care to offer his observations upon this point. Perhaps he can refer me to the case which he has in mind of a joint will properly so called which has been proved as such on the death of the survivor?

Norfolk Street, W.C.2. E. O. Walford.
15th September.

The New Property Statutes: Simplicity and Economy.

Sir,—The main objects of these Acts was to introduce simplicity and economy to conveyancing.

The Editor of *Law Notes* in his excellent introduction to the Acts observes "it may well be doubted whether the machinery set up will not produce disadvantages and difficulties to the owners of land which will outweigh the advantage of simplification."

The Acts have now been in operation since the 1st of January, 1926, and as I have been retired from practice I should like to ascertain from the practitioners if they think these objects have been achieved.

Manchester. R. G. Lawson.
9th September.

The Bishops and Divorce.

Sir,—Your note on the implicits of the pronouncement of the Lambeth Conference, as to the treatment of divorced persons, is one which is very much to the point at the moment. Many of the clergy, not to speak of the laity, appear to be in ignorance of what the King's Ecclesiastical Law lays down, and, in special, of the clause in the Act of 1857, which permits a divorced person, whose spouse is still living, to be married as if his first marriage had been dissolved by death. In spite of this, for quite intelligible reasons, but still quite illegally, clergy frequently refuse to solemnise the marriage of such a person. Further, instructions have been issued to the clergy of the Diocese of London to refuse to put up the bans of any person whose marriage has been dissolved by a decree of the court. It would seem, therefore, that your note is not like an arrow shot into the air, in view of the fact that, at least in the matter of marriage, the clergy are being invited to be a law to themselves.

W. F. Geikie-Cobb, D.D.
Church of St. Ethelburga the Virgin,
Within Bishopsgate, E.C.2.
17th September.

In Lighter Vein.

The Week's Anniversary.

On the 28th September, 1746, was born a boy who "if he had been left naked and friendless on Salisbury Plain would nevertheless have found the road to fame and riches."

Into the forty-seven years of his life Sir William Jones crowded an all but incredible number of achievements. He learnt twenty-seven languages and in his early twenties could write learnedly in French on Oriental poetry. Moreover, he was himself a poet. As for physical accomplishments, he could ride, fence and dance.

Having attained world-wide fame as an Orientalist, he turned to the law, which he had hitherto neglected "because it was written in bad Latin." He was called to the Bar and soon afterwards published a work on bailments "unrivalled in the common law for philosophical accuracy, elegant learning and finished analysis."

Finally, he became a judge at Fort William in Bengal. Amid the conscientious discharge of his duties, he was able to give attention to Hindu music, chronology and chess, to study zoology and botany (the "Jonesia asoka" bears his name), and to become the first Englishman to master Sanskrit. At the time of his death he bade fair to become the Justinian of India, having already completed the translation of the Institutes of Menu.

He was withal amiable and modest and his statue in St. Paul's Cathedral shows him to have been of fine person.

Would you know how he worked? Here is his motto:—

"Seven hours to law, to soothing slumber seven,
Ten to the world allot and all to Heaven."

"The Monster."

It is reported that Peter Kuerten, who is awaiting trial for last year's series of murders and assaults at Dusseldorf, has pined away in prison to a mere spectre of his former self.

His exploits recall a long forgotten scare which culminated in the trial in 1790 at the Old Bailey of Renwick Williams, known as "The Monster."

During the years 1788 to 1790 several women were stabbed (though none fatally) in the streets of London. Had the suggestion of the wits been adopted, the consequent panic might have put the sex into copper petticoats.

A reward was offered for the culprit's arrest. A watch in the Parish of St. Pancras patrolled the streets "to guard that sex which a monster or monsters in opposition to the dictates of nature and humanity have dared to assault and wound with wanton cruelty."

At last Williams was recognised by one of his former victims as he was walking in St. James's Park. He was indicted for a felony under a statute of George I, which made it a crime "to assault any person in the public streets with intent to tear, spoil, burn or deface the garments or clothes of such person." He was found guilty, but a technical objection having been taken to the indictment it was found bad in law.

After a new trial for misdemeanour, when he was convicted of three assaults and sentenced to six years in Newgate, "The Monster" disappears.

Trial by Women Jurors.

It appears that there has been a little trouble in South Africa, where the Minister of Justice has been trying to maintain the masculine monopoly of the jury system. The women have protested and, as usual, gained a point. In future, if one of the sex or if any minor thinks that a more sympathetic hearing would be obtained from a feminine jury, trial by twelve good women and true can be had for the asking.

Here is an undoubted moral victory: it remains to be seen whether it is a practical one. She will be a loyal feminist indeed who will throw herself on the mercy of her sex when the susceptibility of the masculine heart might constitute a factor in her favour.

In a certain case before Darling, J., the lady who was one of the parties started a distant but unmistakable flirtation with a good-looking young juryman. After a three days' hearing, her lovely eyes had shot him so full of Cupid's darts that his fellow jurors could not extract them in three hours. There was nothing to announce but deadlock and disagreement of eleven to one.

The eleven scowls focussed upon him sufficiently identified the gallant and obstinate juror. Later, in a restaurant near the Strand, he was to be seen perfecting the acquaintance so sturdily begun.

Sir William Henry Clarke, solicitor, of Ladywell House, Roundhay, Leeds, and of South-parade, Leeds, for the last ten years City Coroner of Leeds, chairman of Messrs. W. H. Baxter, Ltd., of Leeds, machinery manufacturers, and a director of Messrs. G. Garnett & Co., Ltd., woollen manufacturers, who died on 14th June, aged sixty-six, left estate of the gross value of £24,525.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Right to conduct Burial Service.

Q. 2013. A was a former incumbent rector of a parish in which parish B lived during A's incumbency and during that time B paid to A a fee of £1 1s. for the right to be buried in a grave in A's churchyard where her husband was buried. After A's death C became incumbent and some time after that B moved out of that parish and became a convert to Roman Catholicism. B is now dead and D, the person now in charge of or responsible for the burial of B, desires E, a Roman Catholic priest, to conduct the service at B's funeral in C's churchyard. C objects and refuses to allow E, the Roman Catholic priest, to perform any service in his churchyard. Advice is sought as to E's right to conduct services in C's churchyard. C has been requested to supply the ground of his objection, but so far has failed to do so. His objection is believed to be a personal one. Does s. 6 of the Burial Law Amendment Act of 1880 confer the right on C to conduct this service provided he complies with the conditions of the Act?

A. The fact that B has moved out of the parish would appear to negative any claim of right to be buried in the parish churchyard such as appertains to parishioners and inhabitants. Therefore the burial could in any event only take place with consent of the rector, subject, of course, to consideration of the payment made to a previous rector. As to that the position is rather obscure, and it is open to doubt as to whether such a payment would bind a subsequent rector. The Act of 1880 is only applicable to churchyards where the parishioners and inhabitants have rights of burial; so that for the reason given above it would seem to be inapplicable. We think C is therefore entitled to refuse permission altogether unless his stipulations be met.

The Rent and Mortgage Restrictions Acts, 1920 and 1923—Mortgagee's Power of Sale.

Q. 2014. Prior to 1914, A executed a mortgage in favour of B, to secure a sum of £1,450 and interest. The interest was irregularly paid and in December last was considerably in arrear. The usual three months' notice, calling in the mortgage, was served on the mortgagor, and has expired. In the meanwhile all arrears of interest have been discharged, and there are no arrears outstanding to-day. B is anxious to have the principal sum repaid, and the question now arises as to whether he can enforce his security by sale of the mortgaged property, which consists of three shops and dwelling-houses of a pre-war rental of approximately £160. I shall be much obliged if you will inform me whether B, the mortgagee, is entitled to execute his power of sale in spite of the interest having been paid to date, and secondly, if the property in question comes within the Restriction Acts?

A. It is assumed that by three shops and dwelling-houses is meant three buildings, each of which includes a dwelling-house. If the pre-war rental of each separate hereditament was approximately £160, it is obvious the rent is beyond the limits of the Acts even for London. Probably but not certainly, the rateable value would be also beyond such limit. The limits of course, are £105 for London, and £78 elsewhere in England. If such is the case the question of the Acts does not arise. If it is meant that the aggregate rental was £160, all the buildings in so far as they are or have been let to tenants would be within the Acts. Assuming the latter fact, the case of *Evans* v. *Horner* [1925] Ch. 177, Russell, J., is an authority that the mortgagee may sell, if the interest has been over twenty-one days in arrear. The decision is to the effect that once the mortgagor has broken the condition his protection ceases.

Law of Property Acts—Fire Insurance—Apportionment.

Q. 2015. On a sale of real property by private treaty under "The National Conditions of Sale," what is the correct construction to be placed on Condition No. 19 in regard to fire insurance? The statement of amount payable by purchaser on completion contains a proportion of the fire insurance premium from the date of the contract to end of renewal period of the policy. The purchaser's solicitor objects to pay the amount demanded and offers to pay the proportion of premium from date of contract to date of completion in terms of Condition 3 (2). The vendor's solicitor objects to this and insists that the purchaser is under an obligation to pay the proportion of premium demanded, and also to take over the existing fire insurance policy. The purchaser wishes to make his own arrangements as to fire insurance with another insurance company, and his solicitor informs the vendor's solicitor that a return of a proportionate part of the premium can be claimed from his insurance company. What are the purchaser's rights in the matter?

A. Condition 3 (2) of the National Conditions includes insurance premiums under outgoings to be apportioned. Our own reading of Condition 19, coupled with 3 (2) is that the purchaser is bound to pay a proportion of annual premium from date of contract until renewal date, unless within a reasonable time after the date of contract he has informed the vendor that he disclaims his rights, or what is the same thing that he does not wish for the benefit of the vendor's insurance.

Vendor and Purchaser Sub-Sales—Costs of Production of Deeds.

Q. 2016. In June, 1930, A agrees to sell Blackacre to B, with completion fixed for 29th September, 1930. In July 1930, B sells Blackacre by auction in lots, and we are acting for C, a purchaser of one of the lots. Under C's contract completion is also fixed for 29th September, at offices of B's solicitors, and it is provided that C shall (if required by B) accept a conveyance direct from A with B's concurrence, a course which B will probably require adopted. On the delivery of the abstract, which abstracts A's title and the contract between A and B, B's solicitors state that, with the exception of the contract, the deeds are in the possession of A's solicitors, who will produce them on payment of the usual fee. Is C liable under s. 45 (4), L.P.A., 1925, to pay a fee for the production of the deeds in the possession of A's solicitors? We contend that no fee for production should be charged against C, as the deeds are deeds in the possession of A as trustee for B, a contracting purchaser. We might mention that the deeds will be retained by A as relating also to land belonging to A and not included in the sale from A to B.

A. In our opinion B is bound to pay the costs of production, though A's solicitors may, as between themselves and B, require a fee for each production after the first. In *Shaw* v. *Foster* (1872), L.R. 5 H.L., at p. 338, Lord Cairns said: "Under these circumstances I apprehend there cannot be the slightest doubt of the relationship subsisting in the eye of the court of equity between the vendor and the purchaser. The vendor was a trustee of the property for the purchaser . . . the vendor whom we have called a trustee was not a mere dormant trustee, he was a trustee having a personal and substantial interest in the property . . ."

Discrepancy between Lease and Counterpart.

Q. 2017. A purchased a farm from B subject to the tenancy of C. According to the landlord's copy tenancy agreement as handed over by the vendor to the purchaser, signed by the tenant, the tenant was liable, *inter alia*, "to keep in repair all gates, hedges, fences, beams, stiles, watercourses, ponds, culverts, roads and soughs." The purchaser subsequently to the completion of the purchase discovers that from this clause the word "ponds" was struck out and initialled by the vendor in the tenancy agreement held by the tenant. The tenant has now vacated, and in fact it will cost a sum approaching £100 to clean out and repair the ponds. The vendors conveyed as beneficial owners. What remedy, if any, has A (i) against the tenant, (ii) against the vendor?

A. (1) A has no remedy against the tenant, as the vendor's initialling of the alteration binds A as assignee of the reversion.

(2) A has no remedy against the vendor, as there has been no breach of any of the implied covenants for title, and the difference between the property conveyed and that described in the particulars of sale is insufficient to give rise to a claim for compensation under the contract. It is highly improbable that A bought on the faith of the representation that the tenant was liable to clear out the ponds, and therefore A cannot claim damages for breach of any implied warranty.

Rating and Valuation Acts—Hereditament partly Industrial, partly Non-Industrial.

Q. 2018. Clients of ours have property rated as a whole at £94, consisting partly of a furniture factory, and partly as a retail furniture shop. The assessment committee decided that the premises were not primarily occupied and used for any combination of the purposes A to F in s. 3 (1) of the Rating and Valuation Act, 1928, and referred the matter to the district valuer and ourselves to agree an apportionment of the rate between the industrial and the non-industrial part under s. 4. We were unable to agree, and the matter was again referred to the assessment committee, who assessed £35 to the industrial portion and £59 to the non-industrial portion. In view of the recent cases in the Court of Appeal, were the assessment committee right in apportioning the rate at all? Is it not correct to say that the hereditament, being occupied primarily for industrial purposes, or, rather, not occupied primarily for the purposes A to F, that the hereditaments should be treated as a whole and placed in the special list for de-rating accordingly?

A. The assessment committee was perfectly right. Assuming the property is not primarily occupied for a purpose other than that of a factory or workshop, there must be an apportionment, if the net annual value exceeds £50. Of course, we can say nothing as to the correctness of the figures.

Renewable Leaseholds.

Q. 2019. I shall be glad if you will kindly let me know the position of a landlord whose predecessor in title has granted a large number of leases for lives or for a term of sixty years (under the Conveyancing Act, 1925). As a number of these leases have expired, will it be necessary to prepare new leases, and can the landlord demand more rent than provided for in the original leases? There is no fine payable on the renewal of the leases.

A. It is not understood what is the meaning of the reference to the Conveyancing Act, 1925. It is assumed the leases were granted before 1926. The answer to this query depends on whether the leases are by custom or express contract perpetually renewable ones. If they are, then the conversion provided for by s. 145 of L.P.A., 1922, and the 15th Sched. took place on 1st January, 1926, and no leases are required, and as no fines are payable on renewal there is no additional rent. If the tenants or their representatives could not by custom or contract enforce renewal, then the leases for lives were converted under s. 149 (*b*) of L.P.A., 1925, and if the lives have dropped notice to determine can be given.

Alice in Police Court Land.

Being a jumble of things that have happened, a little exaggerated in the telling.

III.—The Professor who Forgot.

Alice grew quite friendly with Constable C2 All.

One day, when she went in, the court was very crowded. "A cause celebry to-day, miss," he whispered confidentially. "Lord Lyon can't come because he's laid up again with his foot, and Sir Hugh is away at an election. Sir M. White, Knight, is in the chair. The one next to him is Mr. Madden, the well-known hatter, and the third one is Miss Dormeuse. Mr. Needle is prosecuting, and Mr. Dummy defending."

Alice recognized the chairman as an old friend of hers who never could stay on a horse, and she seemed to remember seeing the others. "But," she said to herself, suddenly, "*he's* quite mad."

"Oh, but he's got a loocid interval. He's allright," said C2 All, reassuringly. "There's plenty madder than he is."

"Si-lence," screamed the penguin.

"Call the accused," said the secretary bird importantly.

"Mr. Cues," shouted the usher. "Mr. News," yelled one of the attendant bears.

A little man in gold-rimmed spectacles took his place before the court.

"Professor Noteall, you are charged with scientifically torturing a child, and further with having forgotten you were a father."

"The case, your worships," said Mr. Needle, rising sharply, "is the very worst in my experience, since the vivisection of the March Hare."

"A dear friend of mine," murmured Mr. Madden.

"The only witness is a woolly caterpillar, but I have also evidence of a confession made publicly before a number of people."

"Call Mr. Woolly," said Mr. Needle, opening one eye very wide, and shutting it suddenly as if he saw something just going into it.

"That's what needles always do just when you're going to thread them," said Alice.

"Mr. Fully," shouted the penguin. "Mr. Muley," called the bear. "Mr. Dooley," said another voice outside. Meanwhile the caterpillar had entered the witness box.

He gave his name and address and occupation, and then Mr. Needle pounced on him.

"Do you know the accused?"

The caterpillar looked straight at Miss Dormeuse and said, "I do."

"Did he catch you bending?"

"I don't remember."

"Your worships," said Mr. Needle, "I appeal to your worships. It was laid down by very great authority indeed, in the leading case of *R.* v. *Knave of Hearts* (1865), reported in 1 Carroll, that a witness *must* remember."

"You *must* remember," said all the members of the court with one voice.

This did the trick, much to the surprise of Alice, who had suppressed a giggle with the greatest difficulty.

"Oh, yes, he did, and he popped me into a box, quite dark: oh! horribly dark."

"Yes, and what happened after that?"

"He took me out and put me on a table in front of a little girl, and then he blew a whistle, and she yelled like anything. I fell off the table and crept away."

"No question," said Mr. Dummy, as Mr. Needle sat down. He said this with an air of gravity that made a most profound impression on every one.

"There's more in him that meets the eye," whispered C2 All to Alice.

Mr. Needle then read the confession which Mr. Dummy admitted his client had made :—

"In some experiments on fear . . . I put before my little girl of twelve months a creeping woolly caterpillar, at which she gazed with apparently anxious fascination, but without protest. I then blew behind her a whistle which had previously not caused the slightest fear, even when suddenly blown behind her. With the added slight disturbance, at once the lurking fear of the caterpillar seemed to spring into full activity, and she screamed and shrank from it."

"Oh, this is terrible," said the White Knight. "He forgot he was a father."

Mr. Dummy rose. "I have only one thing to say to this honourable court. It has been laid down again and again that in the interests of science anything may be done, lawful or unlawful, kind or cruel. I ask you to discharge my client. He was simply experimenting to discover whether two small fears cannot be combined into one big fear, a most laudable object, and of immense utility to the whole race."

There was a pained look on the face of the good knight. The hatter started up like a jack-in-the-box :

"Your client ought to have a boa constrictor put in front of *him* and a percussion drill started up suddenly behind him. That's what *I'd* do to him ! That's the sort of man *I* am."

"After that regrettable outburst," said Mr. Dummy severely, "I demand that this case be adjourned to come before another bench. This bench has shown most lamentable bias and a hatred of science truly disconcerting in this advanced age."

"Oh ! " shrieked Alice, "he did forget he was a father." Everyone in court took up the cry, P.C. "C2 All" among the loudest, "HE FORGOT HE WAS A FATHER ! HE FORGOT HE WAS A FATHER ! "

"The proceedings," said the local paper, "ended in a scene of indescribable disorder," and then filled a column with a description of it.

How the case will end no one knows. Alice is very determined about it, and is talking of an appeal to the High Court.

Notes of Cases.

Court of Appeal.

Dudley Revenue Officer *v.* Lloyds British Testing Company Limited.

Scrutton, Greer and Slesser, L.JJ. 11th July.

RATING — INDUSTRIAL HEREDITAMENT — DE-RATING — CHAIN CABLE TESTING STATION—RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 Geo. 5, c. 44), s. 3.

Appeal from a decision of the Divisional Court (74 SOL. J. 320).

The appellants, Lloyds British Testing Company, were owners and occupiers of a hereditament which they used for the purposes of testing, proving and finishing chain cables and anchors in accordance with the provisions of the Anchors and Chain Cables Act, 1899 (62 & 63 Vict., c. 23), and for other purposes. The testing in the case of cables consisted in submitting them to strains according to a table contained in the Act of 1899. In order to apply these strains the cables had to be divided by cutting out links, which were replaced, after the test, by the appellants. The appellants also submitted the chains, after the strain had been applied, to a link-by-link scrutiny, to discover whether any link had suffered under the strain. For this purpose all scale was removed from the links. If any link was found to have suffered it was cut out and replaced by the respondents. The chains were sent to the appellants uncoated because the application of paint or other coating would render it impossible to scrutinise the chains effectively. When the scrutiny had been completed the appellants applied an anti-corrosive to the chains, and then delivered them to consignees. The appellants also tested samples of metal cable, wire rope and other metal substances by testing to destruction, in other words, by breaking the article and discovering the tensile strain which it would bear. Most of the work done by the appellants consisted of work done under the Act of 1899. The Divisional Court held that the primary purpose of the appellants' occupation and use of the hereditament was to apply the provisions of the Act of 1899 to the cables and the fact that they incidentally replaced some links did not alter the character of that purpose so as to make it a factory or workshop purpose. They accordingly held that it was not an industrial hereditament and dismissed the appeal. The testing company appealed.

The COURT (by a majority ; Scrutton, L.J., dissenting) allowed the appeal. The operations performed on the premises of the testing company came within the express words of s. 149 (*c*) of the Factory and Workshop Act, 1901, as the "adapting for sale" of an article. They were part of the processes carried out in the production of a saleable commodity and not part of the processes of wholesale distribution by a merchant. Greer, L.J., said that he found it impossible to hold that a hereditament in which machinery was used for cutting iron or steel cables, and where links were forged and replaced, was not a factory within the Factory and Workshop Act, by the principles laid down in Scrutton, L.J.'s judgment with which he agreed. The making of the goods fit to be lawfully sold was the immediate purpose for which the hereditament was occupied and used. Appeal allowed.

COUNSEL : *Comyns Carr*, K.C., and *John Wylie ; The Attorney-General* (Sir William Jowitt, K.C.), *Wilfrid Lewis* and *Colin H. Pearson*.

SOLICITORS : *Field, Roscoe & Co.*, for *Jobson & Marshall* Dudley ; *The Treasury Solicitor*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

In re Carroll.

Lord Hewart, C.J., Avory and Wright, JJ. 22nd July.

HABEAS CORPUS—ILLEGITIMATE CHILD—TRANSFERRED TO PROTESTANT SOCIETY—ARRANGEMENT FOR ADOPTION BY PROTESTANTS—MOTHER OF CHILD A ROMAN CATHOLIC—APPLICATION FOR RETURN OF CHILD—GUARDIANSHIP OF INFANTS ACT, 1925 (15 & 16 Geo. 5, c. 45), s. 1.

Appeal from an order of Charles, J., refusing a writ of *habeas corpus* to bring up the body of Joan Margaret Carroll. Joan Carroll, the daughter of Ellen Carroll, an unmarried woman and the present applicant for the writ, was born at Warkworth House Infirmary, Middlesex, on the 14th April, 1929. At the end of 1929 the applicant took steps to transfer the custody of her daughter to the present respondents, the Homeless Children's Aid and Adoption Society, and F. B. Meyer Children's Home (Incorporated), a protestant society. She also signed a consent to the adoption of the infant by certain adopters who were of the protestant faith. The mother of the child was a Roman Catholic, and she told the society that the child had been baptised, but did not state whether as a Protestant or Roman Catholic. Before the process of completing the adoption was proceeded with, however, the society were notified by letter dated the 7th December, 1929, from the Roman Catholic chaplain of Warkworth House that the child was baptised by a Roman Catholic priest. The society subsequently received enquiries about the child from the administrator of the Crusade of Rescue and Home for Destitute Catholic Children. The present applicant, the mother, also informed the society that she wanted her child back so that

she could arrange for it to be brought up in its own religion. On receiving a letter from the applicant's solicitors threatening the present proceedings, the society considered it their duty to place the circumstances before the court.

Lord HEWART, C.J., said that no question was raised with regard to the personal fitness and competence of the adopters any more than with regard to the excellence of the care which the child would receive if handed over to those to whom the mother might hand her over. His lordship referred to s. 1 of the Guardianship of Infants Act, 1925: "Where in any proceeding before any court . . . the custody or upbringing of an infant . . . is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration." The effect of reversing the order made by Charles, J., would be to hand over the child not to the mother herself but to an institution. It was said, on behalf of the mother, that her wishes with regard to the Roman Catholic faith ought to be considered. He was not in the least satisfied that the welfare of the infant would be best served by taking her from her present home and handing her over to a care and control that was not maternal but institutional, however excellent that institution itself might be. The judgment of Charles, J., would therefore be affirmed.

AVORY and WRIGHT, JJ., concurred.

COUNSEL: *Serjeant Sullivan*, K.C., and *S. Seuffert*, for the applicant; *Sir Thomas Inskip*, K.C., and *E. G. Palmer*, for the respondents.

SOLICITORS: *Ellis & Willes*, and *Ingpen & Armitage; Carter & Bell.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Legal Notes and News.

Honours and Appointments.

Mr. GERALD H. SELDON, solicitor, has been appointed Town Clerk of Bideford in succession to his father, the late Mr. W. B. Seldon (Messrs. Hole, Seldon and Ward).

Professional Announcements.

(2s. per line.)

Mr. HOWE COWAN (LL.B. New York University), barrister and solicitor (St. John, New Brunswick, Canada), announces that after being identified with some of the large law offices in New York City for the past ten years, he has opened his own offices as Professional Correspondent for Lawyers on Admiralty, Legal and Tax matters, as affecting British subjects and their interests, at 15 Park-row, New York City. 'Phone: Worth 2484; Cable address: "Howcowan," New York.

Messrs. POLLOCK & Co., solicitors, have removed from 6, Lincoln's Inn-fields, W.C.2, to 14, Bolton-street, Piccadilly, W.1. Telephone Nos.: Mayfair 5672, 5673 and 5674.

Mr. HORACE W. DAVIES, solicitor, has removed his offices from 3, Great James-street, Bedford-row, to Effingham-house, 1, Arundel-street, Strand, W.C.2. (Telephone: Temple Bar 3361). Telegraphic Address: "Ora Davies," Estrand, London.

Professional Partnerships Dissolved.

GERALD WRIGHT JOYCE and WILFRED ANDREW CARMICHAEL BOODLE, solicitors, 77, Clarence-street, Kingston-on-Thames, Surrey, and 3, Arundel-street, Strand, London, W.C.2 (George C. Carter & Co.), dissolved by mutual consent as from 6th September, 1930. W. A. C. Boodle will continue to carry on the business at 77, Clarence-street, Kingston-on-Thames, and 3, Arundel-street, Strand, London, W.C.2, as hitherto under the style of George C. Carter & Co.

WALTER RACKWOOD COCKS and ALBERT JOHN TUCKER (Cocks & Tucker), solicitors, Bank-chambers, Exeter, dissolved by mutual consent 9th September, 1930.

HOWARD LACEY HEWITT and SIDNEY ROBERT STAMMERS, solicitors, 52, Coleman-street, London (Wansey, Stammers and Co.), dissolved as and from 4th September, 1930.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May, 1930) 3%. Next London Stock Exchange Settlement Thursday, 9th October, 1930.

	Middle Price 24th Sep. 1930.	Flat Interest Yield.	Approximate Yield with redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	88½	4 10 8	—
Consols 2½%	55¾	4 10 6	—
War Loan 5% 1929-47	104	4 16 2	—
War Loan 4½% 1925-45	100½	4 9 7	4 9 0
War Loan 4% (Tax free) 1929-42	100⅛	3 19 7	3 19 0
Funding 4% Loan 1960-90	92	4 7 0	4 7 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	95½	4 3 9	4 5 0
Conversion 5% Loan 1944-64	105½	4 14 9	4 13 6
Conversion 4½% Loan 1940-44	100½	4 9 7	4 9 0
Conversion 3½% Loan 1961	78	4 9 9	—
Local Loans 3% Stock 1912 or after	64½	4 13 0	—
Bank Stock	257½xd	4 13 2	—
India 4½% 1950-55	86	5 4 8	5 10 10
India 3½%	63	5 11 1	—
India 3%	54	5 11 1	—
Sudan 4½% 1939-73	95	4 14 9	4 15 6
Sudan 4% 1974	87	4 12 0	4 14 3
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years.)	84½	3 11 0	4 1 0
Colonial Securities.			
Canada 3% 1938	91	3 5 11	4 6 0
Cape of Good Hope 4% 1916-36	95	4 4 3	4 19 0
Cape of Good Hope 3½% 1929-49	84	4 3 4	4 15 6
Ceylon 5% 1960-70	102	4 18 0	4 17 9
Commonwealth of Australia 5% 1945-75	84	5 19 1	6 0 6
Gold Coast 4½% 1956	94	4 15 9	4 19 0
Jamaica 4½% 1941-71	93	4 16 9	4 18 0
Natal 4% 1937	95	4 4 3	4 18 0
New South Wales 4½% 1935-45	80½	5 11 10	6 12 6
New South Wales 5% 1945-65	84½	5 18 4	6 1 9
New Zealand 4½% 1945	96	4 13 9	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 3
Nigeria 5% 1950-60	103	4 17 1	4 18 3
Queensland 5% 1940-60	81	6 3 5	6 9 0
South Africa 5% 1945-75	102	4 18 0	4 17 9
South Australia 5% 1945-75	84	5 19 1	6 0 9
Tasmania 5% 1945-75	90½	5 10 6	5 11 3
Victoria 5% 1945-75	82	6 1 11	6 3 4
West Australia 5% 1945-75	83½	5 19 9	6 1 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 3	—
Birmingham 5% 1946-56	103	4 17 1	4 16 0
Cardiff 5% 1945-65	101	4 19 0	4 19 3
Croydon 3% 1940-60	71	4 4 6	4 17 3
Hastings 5% 1947-67 (First full half year's Dividend in October, 1930.)	102	4 18 0	4 17 6
Hull 3½% 1925-55	81	4 6 5	4 16 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	75	4 13 4	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	57	4 14 4	—
London City 3% Consolidated Stock after 1920 at option of Corporation	64	4 13 9	—
Manchester 3% on or after 1941	63	4 15 3	—
Metropolitan Water Board 3% "A" 1963-2003	66	4 10 11	—
Metropolitan Water Board 3% "B" 1934-2003	67	4 9 7	—
Middlesex C.C. 3½% 1927-47	85	4 2 4	4 16 0
Newcastle 3½% Irredeemable	73	4 15 11	—
Nottingham 3% Irredeemable	64	4 13 9	—
Stockton 5% 1946-66	101	4 19 0	4 18 9
Wolverhampton 5% 1946-56	100xd	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82	4 17 7	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	93	5 7 6	—
L. & N.E. Rly. 4% Debenture	75½	5 6 0	—
L. & N.E. Rly. 4% 1st Guaranteed	71	5 12 8	—
L. & N.E. Rly. 4% 1st Preference	55	7 5 6	—
L. Mid. & Scot. Rly. 4% Debenture	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	75½	5 6 0	—
L. Mid. & Scot. Rly. 4% Preference	61	6 11 2	—
Southern Railway 4% Debenture	81	4 18 9	—
Southern Railway 5% Guaranteed	97½	5 2 7	—
Southern Railway 5% Preference	84½	5 18 4	—